

Washington, D. C. 20505

11 NOV 1977

Honorable James T. McIntyre  
Acting Director, Office of Management  
and Budget  
Executive Office of the President  
Washington, D. C. 20503

Dear Mr. McIntyre:

At the conclusion of the meeting with you on 8 November 1977, you asked for comments on the proposal to provide an annuity computed on the basis of "final salary" or "high-one salary" for certain employees whose pay has been statutorily limited.

In submitting our comments, let me first say that we fully support the reasons set forth by Mr. Campbell in his letter of 22 September 1977 to Mr. Lance, which was distributed prior to our meeting with you.

With specific reference to the impact of the proposal on this Agency, there is little question that a number of our supergrade employees are remaining on duty for the purpose of improving their ultimate retirement annuity. Many of these employees could retire immediately, although we doubt that all would. To the extent that some should retire soon, the Agency's ability to promote mid- and high-level managers to positions of higher responsibility would be greatly enhanced. For some time our Director has expressed deep concern about the Agency's rate of promotions, which overall has fallen, and he is striving earnestly to ensure that deserving employees have the opportunity for advancement into these higher level positions. This is obviously made more difficult because of the understandable desire of supergrade employees to remain on duty in order to improve their retirement annuity.

The proposal would also restore to the Agency's top managers a degree of phased retirements of senior-level officers which would permit timely development and implementation of succession planning, development and advancement. Moreover, we believe that the proposal

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would dilute the serious impact of a mass exodus of senior-level employees which might take place in February 1980 when the maximum annuity benefit of current salary levels has been achieved.

We have also a more immediate reason for supporting the proposal. As you know, our Director has ordered a reduction in the size of the Agency's Directorate of Operations. Affected are some supergrade-level employees who, for reasons beyond their control, will suffer interrupted employment. This will also deny them the opportunity to build their "high three" and their retirement annuities. The proposed legislation would serve to minimize greatly the hardship of these employees.

We recognize that there are some adverse implications to the proposal: On cost and for the reasons stated during your meeting, we would support either the one-time or two-time opportunity rather than open-ended legislation in view of the dramatic dollar savings that a limited opportunity achieves. Further, we acknowledge that the proposal might be viewed by the public, not close to the Washington area where the situation of supergrade employees is more fully understood, as preferential treatment, and that even though offered on a limited basis, a precedent will be established which could create pressures for similar action in future years.

We have considered seriously the risks and disadvantages of the proposal. When measured against the advantages -- in terms of our fundamental and significant managerial concerns -- our view is to support the proposal.

We urge, therefore, that favorable consideration be given. If, of course, some other means can be devised to achieve the same end; i.e., that of encouraging these employees to accelerate retirement, we would be pleased to comment on such proposals. We regret that we have no alternatives to submit.

Sincerely,

/s/John F. Blake

John F. Blake  
Acting Deputy Director

Dist:

- 0 - Add
- 1 - A/DDCI
- 1 - ER
- 1 - A/DDA
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Originator:

Acting Director of Personnel

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September 22, 1977

Honorable Bert Lance  
Director, Office of Management and Budget  
Executive Office of the President  
Washington, D. C. 20503

Attention: Assistant Director for  
Legislative Reference

Dear Mr. Lance:

This is in reply to your request for the Commission's views on the Department of Defense draft bill, "To permit Civil Service employees in the grades of GS-15, GS-16, GS-17, GS-18, or level V of the Executive Service whose rate of basic pay was limited by Section 5308 of title 5, United States Code, to the rate of level V of the Executive Schedule during the two-year period prior to September 1, 1976, to compute their retirement annuity on the basis of the highest rate earned in 1977, rather than on the basis of averaging the rate of basic pay earned over any 3 consecutive years of creditable service."

The effect of the proposal would be to supersede 5 U.S.C. 8331(4) to allow affected eligible employees retiring optionally before January 1, 1979 or involuntarily before March 1, 1980, to have their retirement annuities computed on the basis of the single highest rate of basic pay achieved during calendar year 1977, rather than on the basis of the normal high three year average rate. Optional retirement under such provision would have to be requested by an employee between November 1, 1977 and January 31, 1978.

The draft bill is in response to the March 1977 increase in Congressional, Judicial, and Executive salaries, rates of compensation which had been effectively frozen for the previous eight years. Due to the imposed ceiling, the March 1977 pay adjustment clearly does represent a formidable disincentive for affected employees to retire at the

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present time. We concur with the reasoning behind the draft bill; that those eligible employees who would legitimately prefer to retire, might be inclined to remain on the job simply for the purpose of maximizing their high three year average salary for annuity purposes. In addition, we are aware of the impending reduction-in-force which the Department of Defense will be facing early in 1978. The combination of these factors will tend to impact severely, on the recent gains which have been experienced in the area of equal employment opportunity. As the Commission is interested in, and committed to, encouraging the career development of women and minorities in management positions, we would favor some appropriate means of removing the aforementioned disincentive for retirement.

In this light, we have prepared a substitute proposal which is attached to this letter. We believe that our substitute achieves the desired end in a more efficient manner than the Defense proposal. Essentially, our proposal would provide an annuity computed on the basis of final salary to any civil service employee whose rate of basic pay was limited by section 5308 or 5363, of title 5, United States Code, or other applicable statutory authority, prior to a pay increase and who retires at any time subsequent to the effective date of that pay increase. We consider this alternative attractive for several reasons:

1. It removes the disincentive to retire at any given time, rather than just during a short period following the last lifting of the statutory limitations on pay. The method of increasing executive pay, at irregular intervals and by substantial increments, causes a special problem for these employees with regard to the high three year average salary provision of the retirement law. There is a compelling reason for them not to retire immediately after a pay increase, which the great majority of employees, whose pay is increased regularly and more gradually, do not share.
2. It mitigates against the adverse effects of a reduction-in-force on EEO advances. By allowing senior executives to retire immediately on annuities computed on the basis of the maximum foreseeable benefit, considerably fewer reductions would have to be sustained by the more junior managers, who are, in many cases, women and minorities.
3. It provides for continued effective agency operation. By encouraging imminent retirements, it serves to protect those mid and lower level managers who are important to the agency's future, and who might otherwise be lost in a reduction-in-force situation.

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4. It tends to make pay a neutral factor for an employee considering retirement.

We recognize that enactment of legislation along the lines suggested might precipitate the retirement of certain individuals whose services are not readily replaceable, and who would otherwise continue on the job. However, balanced against the stated advantages of the proposal, we believe that the risk involved is an acceptable one.

In our judgment, our substitute proposal is preferable to the original Department of Defense draft bill. While the goals are basically the same in each case, we believe our substitute offers a more efficient and equitable means of attaining them. Accordingly, we urge that our substitute bill be supported in lieu of the Defense bill. A complete legislative package for submission of our proposal to the Congress has been prepared.

At the end of 1976 there were about [ ] Federal employees who were affected by the pay freeze. Of these, there are approximately [ ] who would be eligible to retire voluntarily at final salary. We have no way of knowing how many of those eligible to retire under this proposal would do so, but certainly all would not. Added retirement costs would result for those who would choose to retire earlier than they would have in absence of the proposal, but we do not believe that the total cost would be substantial. We are obtaining data on retirement patterns so that the costs of the various proposals can be fully analyzed. We expect to have cost figures by September 30.

Attached are copies of identical letters with which the Commission proposes to submit to the Speaker of the House and the President of the Senate the referenced substitute draft legislation. We shall appreciate your informing us whether there is any objection to submission of the draft legislation as proposed.

By direction of the Commission:

Sincerely yours,

[ ]

Chairman

Enclosure

RD:RET [ ] 1 9/19/77

Honorable Thomas P. O'Neill

Speaker of the House of Representatives

Dear Mr. Speaker:

I submit for the consideration of Congress, and recommend favorable action on, the attached draft bill to lessen the effect of statutory pay limitations on the retirement of certain executive employees under the provisions of the Civil Service Retirement law.

Under current law, civil service retirement annuities are computed on the basis of a high three year average salary and length of service. For the great majority of employees, whose pay is increased by gradual amounts at regular intervals, the average salary component in the computation is not a critical element in the timing of retirement. However, for executives whose pay is limited statutorily, quite the opposite is true. Their pay is adjusted irregularly and by substantial amounts. Consequently, for them, the timing of retirement is intimately related to the average salary factor, due to its fluctuant nature. The normal operation of the retirement law produces a formidable disincentive for these employees to retire within three years of a pay adjustment. This situation which restricts the flexibility of the agency as well as the employee, and which is currently being experienced, takes on an added dimension when an agency becomes subject to a reduction-in-force. In such a case the retirement law acts to thwart the preferences of agency management by encouraging the most senior executives, who might otherwise be willing to retire, to remain on the job simply for the purpose of maximizing their average salary for annuity purposes, while those with lower retention rights, who are being counted on to play important roles in the agency's future, must be released. Often, this latter group contains many women and minorities who have recently benefited from equal employment opportunity programs.

In light of the above, we believe that the disincentive for senior executives to retire must be eliminated, and we have designed our proposal to that purpose. Essentially, our proposal would alter the retirement law to provide an annuity computed on the basis of final salary to any civil

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service employee whose rate of basic pay was statutorily limited prior to a pay increase, and who retires at any time subsequent to the effective date of that pay increase. We believe that our proposal represents an effective and equitable solution to this problem.

We recognize that enactment of legislation along the lines suggested might precipitate the retirement of certain individuals whose services are not readily replaceable, and who would otherwise continue on the job. However, balanced against the advantages provided by the proposal, we believe that the risk involved is an acceptable one.

At the end of 1976 there were about [ ] Federal employees who were affected by the pay freeze. Of these, there are approximately [ ] who would be eligible to retire voluntarily at final salary. We have no way of knowing how many of those eligible to retire would do so, but certainly all of those eligible to retire would not. Added retirement costs would result for those who would choose to retire earlier than they would have in absence of the proposal, but we do not believe that the total costs would be substantial. We are obtaining data on retirement patterns so that the costs of this proposal can be fully developed and submitted at a later date.

We urge that prompt attention be given to this proposal because of the critical nature of the aforementioned problem for agencies, such as the Department of Defense, for which major reductions-in-force are imminent. In addition, enactment of this proposal would facilitate the efforts of other agencies who are planning to cut back or reorganize in the near future.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of the proposal.

A similar letter is being sent to the President of the Senate.

By direction of the Commission:

Sincerely yours,

[ ]

Chairman

Attachment

RD:RET: [ ] mkb&mda

9/19/77

9/22/77

[ ]

A BILL

To lessen the effect of statutory pay limitations on the retirement of certain executive employees.

1     Be it enacted by the Senate and House of Representatives of the  
2     United States of America in Congress assembled, that section 5336  
3     of title 5, United States Code, is amended by adding the following  
4     new subsection:

5         "(b) An employee who is separated with title to an annuity  
6         shall be entitled to an annuity computed under section 5339(a)  
7         of this title if he or she--

8             (1) was paid (A) at a rate of pay subject to adjustment  
9             under section 225 of the Federal Salary Act of 1967,  
10            Public Law 90-206 (2 U.S.C. 351 et. seq.), or (B) at a  
11            rate equal to a rate subject to adjustment under such  
12            section 225, or (C) at a rate affected by the limitation  
13            on rates of pay that may be paid under sections 5303 or  
14            5363 of this title, or other similar statute, immediately  
15            prior to the effective date of a pay increase authorized  
16            under such section 225 or under Title II of Public Law  
17            94-82 (89 stat, 419),

18            and

19            (2) was separated after the effective date of the last  
20            preceding pay increase authorized under such statutes."

21     Sec. 2. Section 5339 of title 5, United States Code, is



1 amended -

2 (1) by inserting in subsection (f), immediately after  
3 "subsections (a)-(e), the following: "and (n)";

4 (2) by striking out of subsection (h) "subsections (a),  
5 (b), and (f)" and inserting in lieu thereof the following:  
6 "subsections (a), (b), (f) and (n)".

7 (3) by inserting in subsection (i), immediately after  
8 "subsections (a)-(h)", the following: "and (n)";

9 (4) by inserting in subsections (j) and (k)(1),  
10 immediately after "subsections (a)-(i)" each time it appears.  
11 the following: "and (n)";

12 (5) by inserting in subsection (l), immediately after  
13 "subsections (a)-(k)," the following: "and (n)";

14 (6) by inserting in subsection (m), immediately after  
15 "subsections (a)-(e)", the following: "and (n)"; and

16 (7) by adding at the end thereof the following new  
17 subsection:

18 "(n) The annuity of an employee retiring under section 8336(h)  
19 of this title is computed under subsection (a) of this section  
20 except that for purposes of computation "average pay" shall  
21 mean the greater of --

22 (1) the final salary of the employee immediately prior  
23 to separation; or

24 (2) the high-3 average pay as defined in section 8331(4)  
25 of this title.

1       Sec. 3. (a) Section 3341 of title 5, United States Code, is  
2       amended -

3       (1) by inserting in subsection (b)(1), immediately after  
4       "section 8339(a)-(i)", the following: "and (n)"; and

5       (2) by striking out of subsection (d) "section 8339(a)-(f)  
6       and (i)" and inserting in lieu thereof the following:  
7       "section 8339(a)-(f), (i), and (n)".

8       (b) Section 3344(a)(4)(A) of such title is amended by  
9       striking out "and (i)" and inserting in lieu thereof "(i), and (n)".

10      Sec. 4. The amendments made by this Act shall take effect on  
11      and apply to employees retiring on or after the date of enactment  
12      of this Act and includes those who were receiving pay at the maxi-  
13      mum limited rate immediately prior to March 1, 1977, the effective  
14      date of the last preceding pay increase authorized under section  
15      225 of the Federal Salary Act of 1967.

### Sectional Analysis

Section 1 provides that the draft bill would apply to all Federal employees under the Executive Schedule or paid at Executive Schedule rates under other laws. Executive Schedule employees are paid at a single fixed rate, subject to adjustment at 4-year intervals under section 225 of the Federal Salary Act of 1967, Public Law 90-206 (2 U.S.C. 351 et. seq.) or to adjustment under Title II of Public Law 94-82. The draft bill would also apply to Federal employees under "statutory pay systems" as defined in section 5301(c) of title 5, United States Code and to employees whose pay is fixed by administrative action if the rate of pay of such employees is limited to the rate for a specific level of the Executive Schedule by sections 5303 or 5363 of title 5, United States Code, or by other similar statute.

Any Federal employee in the listed categories who is separated with title to an immediate annuity is entitled to an annuity computed under section 8339(n) of title 5, United States Code if (1) his or her rate of pay had attained and was being paid at the limited rate immediately prior to the effective rate of a pay increase authorized under such section 225 or under Title II of Public Law 94-82, and (2) his or her separation occurs after the effective date of the last preceding pay increase authorized under such statutes. Section 225 of the Federal Salary Act of 1967 authorizes increases every 4 years in amounts recommended by the President unless the President takes no action, or unless either House of Congress votes against the President's recommendation.

Public Law 94-82 authorizes a corresponding increase in rates of pay subject to adjustment under such section 225 whenever rates of pay under statutory pay systems are increased under the provisions of section 5305 of title 5, United States Code (Federal Pay Comparability). However, Congress has excluded themselves and all employees whose rates of pay are subject to adjustment under section 225 from the provisions of Public Law 94-82 for the October 1977 increase only, and could conceivably pass such exclusions for future years.

Thus, all employees under the Executive Schedule who become eligible for an immediate annuity would under ordinary circumstances have an opportunity each year under P.L. 94-82 and each 4 years under section 225 to increase their annuity substantially. The same opportunity would apply to those supergrade or other employees who now or in the future attain the limited salary rate.

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Section 2 of the draft bill contains technical amendments of general applicability to section 8339 of title 5, United States code and also the computation formula, in new subsection (n), for employees retiring under the draft bill. Subsection (n) provides that the annuity of an employee retiring under section 8336(h) [as added by the draft bill] shall be computed under the general formula except that for purposes of computation "average pay" shall mean the final salary or the high-3 average pay -- whichever is greater. The high-3 average pay could possibly be greater for a supergrade employee who had previously served in a position under the Executive Schedule and it is not the intent of the draft bill to deny a benefit to which the employee would otherwise be entitled.

Section 3 contains additional technical amendments of general applicability.

Section 4 provides that the bill becomes effective upon enactment for employees retiring on or after that date. Section 4 also specifically includes those employees who were receiving pay at the maximum limited rate prior to the effective date (March 1, 1977) of the last pay increase authorized under section 225. Many employees in grades 15, step 7 through grade 16, step 6, who were receiving pay at the frozen rate prior to that date may not have another opportunity unless there is again a long period of no increases such as was experienced in the past.